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October 2, 2007

VIA ELECTRONIC FILING

The Honorable Gregory M. Sleet
United States District Judge
J. Caleb Boggs Federal Building
844 N. King Street, Lockbox 18
Wilmington, DE 19801

Re: Biovail v. Andrx Pharmaceuticals LLC et al.,
C.A. No. 05-586 (GMS)

Dear Chief Judge Sleet:

We represent the defendants in the above-referenced matter, which the Court recently re-scheduled for trial to commence on November 13, 2007, instead of October 15, 2007.

We write to request the Court's permission to use the additional time to submit three brief motions *in limine* concerning *Daubert* and evidentiary issues that could be addressed at the Pretrial Conference, now scheduled for November 6, 2007. We respectfully submit that the briefing will allow the Court more time to consider the legal issues presented, may streamline the trial, and will lead to a more efficient use of trial time by reducing the amount of legal argument.

Currently, the schedule does not call for *in limine* motions. Your Honor may recall that the Court eliminated *in limine* motions from the schedule during discussion at the Markman hearing, on May 24, 2007, in order to make the schedule work with the October 15th trial date that Your Honor had set, instead of pushing the trial back to mid November. Now that the trial has been pushed back to November, Andrx respectfully suggests that a limited number of *in limine* motions would be helpful to the parties and the Court in planning for trial. We are proposing only three motions *in limine* (rather than the standard ten contemplated by the Court's form scheduling order), and propose only opening and answering submissions of five pages each, eliminating reply briefs. We propose opening submissions on October 12, with responses on October 26.

We raised this issue with the other side, and they were not willing to jointly request the ability to file motions *in limine*, relying on the scheduling order provision eliminating motions *in limine*, entered after the discussion at the Markman hearing. We would be happy to discuss this

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issue with Your Honor if a call would be helpful. Otherwise, we will await the Court's instructions.

Respectfully,

/s/ Richard L. Horwitz

Richard L. Horwitz

RLH:nmt/822580/30015

cc: Clerk of the Court (via Hand Delivery)
Counsel of Record (via Electronic Mail)